

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-004-13-1-5-01161-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-452-024.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 3826 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant residential property at \$3,100.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On August 24, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officer Joseph E. James. They were both sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map
  - Petitioner Exhibit B: Two property record cards (“PRCs”) for the subject property
  - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 739-29 W. 35<sup>th</sup> Avenue, Land Comparison Approach, and PRC (2015-2019)
  - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Land Comparison Approach, PRC (2015-2019), and tax bill
  - Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Land Comparison

Petitioner Exhibit F: Approach, and PRCs (2015-2019) for each parcel  
E-mail from Andy Young regarding PTABOA  
meetings  
Petitioner Exhibit G: Minutes of the July 22, 2020 PTABOA  
meeting  
Petitioner Exhibit H: Minutes of the July 8, 2020 PTABOA meeting<sup>1</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

### **SUMMARY OF CONTENTIONS**

7. Nowacki's case:
- a. According to state law, the general criteria for determining assessed valuation is fair market value. Fair market value is the price a willing buyer with no compulsion to buy would offer for a property and what a willing seller with no compulsion to sell would accept for the property. *Nowacki testimony*.
- b. The subject property is in a low-lying area with limited development. Although the Assessor characterizes the neighborhood as static, it declined significantly. This is supported by the fact that it was in the county inventory since 1984. It churned through the system for 25 years before Nowacki acquired it in 2009 for \$102 at an auction attended by hundreds of eligible bidders. The purchase price does not determine fair market value because auctions generally attract people who are looking to acquire a bargain. *Nowacki testimony; Pet'r Exs. A, B1, B2*.
- c. No one would argue that property values in Gary are going up. The city has declined considerably in the last 10 years. The subject property was assessed at \$3,100 in 2008 and remained at that value until 2013, after which it declined to \$2,700. This

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<sup>1</sup> The Assessor did not submit any exhibits.

shows agreement that the property value is declining. The current \$2,700 value is within 10% of the value Nowacki places on the property. He would be willing to accept that as reasonable, but not \$3,100, which is 20% over his requested value. *Nowacki testimony; Pet'r Exs. B1, B2.*

- d. The Kovachevich appraisals done at the request of the Lake County Assessor's Office were ignored. They show properties assessed at 34 times their market value. This is arbitrary, capricious, reckless, and damaging. The motivation could be as simple as the benefits to certain people of having these properties churn through the system. Insiders get these properties and can go to the Assessor's Office and have the value corrected. But private citizens without any connections or interest in colluding with the Assessor's Office would be at a loss to have their values corrected. *Nowacki testimony; Pet'r Exs. C-F.*
  - e. Minutes of the PTABOA meetings show collusion between PTABOA members and petitioners. The minutes also indicate that the reassessment by Cole, Layer, Trumble was dismissed summarily by the Assessor's Office, who simply substituted their own arbitrary and suspect assessments. *Nowacki testimony; Pet'r Exs. F-H.*
8. The Assessor's case:
- a. The Assessor recommends no change in value. *James testimony.*

#### ANALYSIS

9. Nowacki failed to make a case for reducing the property's 2013 assessment. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.; see also* I.C. § 6-

- 1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is March 1, 2013. Ind. Code § 6-1.1-2- 1.5(a).
- c. Nowacki contends that the 2013 assessment should be \$2,500, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki claims the Kovachevich appraisals show that the three properties he appraised are over-assessed, and that the subject property is likewise over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- e. Nowacki's evidence is insufficient to support a uniform and equal challenge. He only offered the cover page and "Land Comparison Approach" page from each of the three appraisals, making it impossible for us to evaluate how Kovachevich reached his value conclusions. Furthermore, Kovachevich appraised the three properties as of January 1, 2017. Thus, the evidence lacks probative value because Nowacki failed to relate Kovachevich's value conclusions to the valuation date at issue here. Additionally, he failed to convince us that his dataset complies with the professional standards for ratio studies or that the three properties he used constitute a statistically reliable sample.
- f. We also give no weight to his claims regarding the subject property's decreasing assessment. Putting aside the fact that the decreasing assessment appears to

correspond with his view of the surrounding area as a neighborhood in decline, the Assessor's decision to decrease the property's assessment in subsequent years does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).

- g. To the extent Nowacki was asserting that his purchase at auction established market value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). However, Nowacki failed to provide any indication that the sale met the requirements of an open market transaction. He also failed to relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.
- h. As for Nowacki's allegations regarding the PTABOA, we note that the testimony at the PTABOA meeting did not specifically address any of Nowacki's properties. Nowacki also completely failed to explain how this information supports his requested valuation.
- i. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2013 assessment.

ISSUED: November 10, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.